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And Relief Defendants True North United Investment, LLC and Block Brothers, LLC*

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

GREEN UNITED, LLC, et al.,

Defendants.

**DEFENDANTS GREEN UNITED, LLC  
AND WRIGHT W. THURSTON AND  
RELIEF DEFENDANTS TRUE  
NORTH UNITED INVESTMENTS,  
LLC AND BLOCK BROTHERS, LLC  
RESPONSE TO PLAINTIFF  
SECURITIES AND EXCHANGE  
COMMISSION'S NOTICE OF  
SUPPLEMENTAL AUTHORITY**

Case No. 2:23-cv-00159-BSJ

Judge Bruce S. Jenkins

## **RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants respectfully respond to the SEC's notice of supplemental authority, which asserts that the out-of-circuit, district court opinion *SEC v. Terraform Labs Pte. Ltd.*, 23-CV-1346 (JSR), 2023 WL 4858299 (S.D.N.Y. July 31, 2023) provides additional authority for rejecting Defendants' Major Questions Doctrine and fair notice defenses. *See* ECF No. 48 at 2. It does not.

First, the *Terraform* ruling ignores recent Supreme Court applications of the Major Questions Doctrine. The *Terraform* ruling holds that the Major Questions Doctrine does not apply to the cryptocurrency industry because that industry is not "on the same plane of importance" as the tobacco and energy industries. *Id.* But that is not the threshold test of economic and political significance. In its recent opinions, the Court looked to the size of an industry or regulatory costs without comparison to the tobacco or energy industries. *See Biden v. Nebraska*, 143 S. Ct. 2355, 2373 (2023) (there is no serious dispute that costs in the range of \$469 billion to \$519 billion constitute a significant portion of the economy); *Alabama Ass'n of Realtors v. Dep't of Health & Human Servs.*, 141 S. Ct. 2485, 2489 (2021) (cost of \$50 billion triggered analysis).<sup>1</sup> The \$1 trillion digital asset industry, which reaches the one in five Americans who own cryptocurrencies, similarly comprises a significant portion of the economy. *See also Commonwealth v. Biden*, 57 F.4th 545, 548 (6th Cir. 2023) (applying the Major Questions Doctrine to a vaccine mandate for federal contractors where 20% of the nation's labor force works for a federal contractor).

Second, the *Terraform* ruling ignores the necessary context that Congress is actively considering legislative proposals that do not vest sole regulatory power over digital assets with the

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<sup>1</sup> In other Major Questions Doctrine cases, the Court has not precisely quantified "size." *See, e.g., King v. Burwell*, 576 U.S. 473, 485-486 (2015) ("billions of dollars" impacting "millions of people"); *UARG v. EPA*, 573 U.S. 302, 324 (2014) (the power to require permits for stationary sources of greenhouse gases); *Gonzales v. Oregon*, 546 U.S. 243, 267-268 (2006) (use of certain scheduled drugs for physician assisted suicide).

Third, the *Terraform* ruling further demonstrates the confusing impact of regulation by enforcement. Until recently, the SEC disclaimed its regulatory authority.<sup>3</sup> Years after the conduct at issue in this case, the SEC reversed course and initiated a campaign of regulation by enforcement based on aggressive interpretations of the terms “investment contract” and “scheme.” Today, the result is that district courts, even in the same district, are reaching different conclusions on when a digital asset is a security. *Compare Terraform*, 2023 WL 4858299, at \*15, with *SEC v. Ripple Labs, Inc.*, 20 CIV. 10832 (AT), 2023 WL 4507900, at \*11-12 (S.D.N.Y. July 13, 2023).

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<sup>3</sup> See, e.g., *Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide, Part III: Hearing Before the H. Fin. Servs. Comm.*, 117th Cong. 12 (May 6, 2021) (statement of Gary Gensler, SEC Chairman).

**CERTIFICATE OF SERVICE**

On this 9th day of August 2023, I hereby certify that I electronically filed a true and correct copy of the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification and service to all counsel of record.

/s/ Jonathan D. Bletzacker